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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

August 1, 2012

4:02 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(Doc#90,47) Adj. Telephone Status Conference on the Record, Re:
Motion Authorizing the Debtors to Continue to Perform Under the
Ally Bank Servicing Agreements in the Ordinary Course of
Business.

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P R O C E E D I N G S

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THE COURT: On behalf of the debtor, Mr. Lee and Mr.
Rains. Is that right?

MR. LEE: That's correct, Your Honor.

THE COURT: Mr. McKane and Mr. Schrock?

MR. MCKANE: Yes. That's correct, Your Honor.

THE COURT: Seife, that's for the examiner, anybody
else?

All right. Why don't we begin?

MR. LEE: That's very good. Your Honor?

THE COURT: Yes?

MR. LEE: I apologize. So this is Gary Lee on behalf
of the debtors. Your Honor, we wanted to give you a report on
discovery. And I'm going to turn it over to my partner, Darryl
Rains, who's going to be trying the case if we get there, to
report.

At the end, Your Honor, we'd like to reserve some time
to raise an issue that's come up with respect to the motion
that's before Your Honor, as well as the fact that it covers in
sum and substance, the subject of Your Honor's examination
order. We've had a discussion with the examiner, and he has
asked to address Your Honor at the end of the discussion on
discovery and timing and schedule.

THE COURT: Okay.

MR. LEE: Okay. So if I may, Your Honor, may I turn

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1 it over to Mr. Rains?

2 THE COURT: You certainly may.

3 MR. LEE: Thank you, sir.

4 MR. RAINS: Good afternoon, Your Honor. This is
5 Darryl Rains from Morrison & Foerster. Let me give you a quick
6 report on discovery from the debtors' point of view.

7 First, I'm happy to report that we produced virtually
8 all of our documents on Monday. There are a few stragglers
9 that we're getting out today. There are also a few issues that
10 have arisen today, questions that we've gotten from the
11 creditors' committee. But we still expect to have completed
12 our document production by today.

13 Let me also just update you on deposition scheduling.
14 We have four witnesses who we intend to submit direct testimony
15 for. And they are scheduled for deposition beginning on
16 Friday. We have the CFO, Mr. Whitlinger on Friday; then Senior
17 Vice President of Servicing Matt Detwiler, on Monday; the CEO,
18 Tom Marano, on Tuesday; and then we'll be offering up Joe
19 Pensabene, who's executive vice president. He's available on
20 Wednesday.

21 So we think we have complied with the Court's prior
22 orders and that we've been quick and diligent in getting our
23 documents and our witnesses scheduled.

24 THE COURT: Okay.

25 MR. MCKANE: Your Honor, this is Mark McKane on behalf

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1 of AFI and Ally Bank. I'd like to give you an update as well.

2 THE COURT: Thank you, Mr. McKane. Go ahead.

3 MR. MCKANE: Thank you, sir. We also have satisfied
4 our obligations in response to the committee's request, which
5 we just received last Monday, eight and a half days ago. We've
6 made a targeted production of all the materials on the issues
7 that they wanted us to focus on, the five core topics. And we
8 completed that production today. Importantly, the core
9 materials that we believe would be those most likely to be used
10 in a deposition or in a hearing were produced by yesterday.

11 We have two witnesses that we are going to be
12 presenting direct testimony for at trial. The first is going
13 to be the bank's CEO, Barbara Yastine, and she is available for
14 a deposition on Friday. And then on Monday, we are making
15 available Jim Mackey, who is the CFO of AFI.

16 THE COURT: Okay.

17 MR. O'NEILL: Your Honor, this is Brad O'Neill on
18 behalf of the committee. We have a few issues on documents and
19 on depositions. First, we did receive from the debtors on
20 Monday about 68,000 pages of documents. We are working through
21 those. We've received a number of installments from AFI, about
22 40,000 pages at the end of last week, plus, I think 1,000
23 yesterday and another 13,000 about an hour ago. And we're
24 working through that.

25 There is one area of -- there's one gap, as we

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1 understand it, in the Ally-AFI production. And that is that we
2 don't have e-mails from some critical people, including Ms.
3 Yastine, who they're proposing as a witness, and also, some
4 senior executives of Ally -- of AFI, rather. And let me give
5 you an example.

6 We received from the debtors a copy of an e-mail from
7 Tom Marano, who's the CEO of ResCap, dated two days before the
8 petition date, to Michael Carpenter, the CEO of AFI, and Jeff
9 Brown, who is, I believe, his second-in-command, saying that --
10 describing essentially the modification in reimbursement
11 process under the subservicing agreement, indicating that the
12 pull-through rate is higher than expected, two times higher
13 than expected, and that as a result, indemnification payments
14 could be 70 to 120 million dollars higher than expected or
15 projected, and suggesting that AFI agree to reimburse ResCap
16 for that increased cost.

17 We do not have -- and my understanding is we will not
18 receive as part of this production, or at least AFI has not
19 undertaken to produce -- Mr. Carpenter's or Mr. Brown's
20 e-mails. It seems to us, however, that there was a very high-
21 level discussion, at the upper reaches of both companies
22 concerning matters that are central to this motion and central
23 to Your Honor's consideration of the subservicing agreement.
24 And we think, frankly, we need the e-mails.

25 And the same thing would be true for Ms. Yastine, who

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1 is being proposed as the person most knowledgeable of issues
2 relating to Ally Bank. So that's point number one.

3 Point number two, on the scheduling of depositions,
4 Your Honor, what you've been told about the scheduling of
5 depositions, is the schedule proposed by the debtors and Ally
6 Bank and AFI. We are working through the document productions.
7 I think given that we got 13,000 pages of documents today from
8 Ally Bank, it's going to be extremely difficult for us to be
9 prepared to take a deposition on Friday morning.

10 Interestingly, Your Honor, they're proposing to
11 produce the head of Ally Bank, whose office is in our building
12 on our elevator bank, out at Newark Airport. So while I
13 understand she's flying in from the West Coast, it's just an
14 additional level of complication, and we would prefer to depose
15 both Ms. Yastine and Mr. Whitlinger next week. And we have
16 made -- we have people available. We're ready to do it Monday,
17 Tuesday, or Wednesday. And we have sufficient attorneys
18 available to do it on a triple-track basis, if necessary.

19 MR. MCKANE: Your Honor, this is Mark McKane. May I
20 respond directly?

21 THE COURT: Let me see whether anybody else wants to
22 be heard first.

23 Go ahead, Mr. McKane.

24 MR. MCKANE: Thank you, sir. Your Honor, we, unlike
25 the debtor, whose motion this is, we did not receive these

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1 discovery requests six weeks ago. We received this request
2 eight and a half days ago. We immediately had a call the
3 following morning, Tuesday; identified targeted searches; and
4 proceeded and conducted those searches.

5 The materials that they want us to focus on were five
6 agreements: the servicing agreement, the 2010 indemnity
7 agreement; the January 30th support agreement; the DOJ-AG
8 settlement agreement; and the resizing of the AFI DIP. That's
9 not my identification of the topics. That's the committee's
10 before our call on Thursday.

11 We proceeded forward focusing on those materials. We
12 produced the following categories of materials: board minutes,
13 presentations to the board, final versions of the agreements,
14 draft versions of the agreements, e-mails relating to those
15 negotiations, and calendar notices about the meetings and the
16 back-and-forths. We had to do it on a targeted basis, focusing
17 on the key negotiators, including Ms. Yastine, who was the lead
18 negotiator in this case, who handled it personally against Tom
19 Marano, over series of months. And so those are materials that
20 have been produced. And they do include e-mails.

21 Moreover, as it relates to the targeted materials that
22 would be related to the matter, we have produced those. If
23 there's anything that they're having difficulty identifying, we
24 have offered to identify it by Bates number. For example, when
25 I spoke to Mr. O'Brien (sic) a few hours ago, he specifically

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1 asked about bids that related to whether the pricing of the
2 servicing agreement vis-a-vis the marketplace, I specifically
3 identified and directed him to the April 25th presentation to
4 the Ally Bank and offered him the Bates number for that, if he
5 wanted it.

6 And as it relates to Ms. Yastine's availability, she
7 is currently en route to the West Coast for Ally business. We
8 met with her this morning. She is returning from the West
9 Coast on the redeye on Friday. She asked to meet at the
10 airport. We flagged this issue as soon as we were aware of it,
11 and made the accommodations available for it occur, because
12 immediately after the deposition, she is taking a week off, not
13 just for vacation, but to handle a very personal matter as it
14 relates to her mother.

15 So she is not in the office next week. We recognize
16 that she's an important witness. But we have made every offer
17 to identify the core materials, and importantly, the key
18 materials that will be relevant and necessary for any
19 examination of Ms. Yastine were produced by yesterday. And we
20 made efforts -- specific efforts to do so. And we by stand by
21 the offer. If --

22 THE COURT: Wait, wait. Time out. Stop. You don't
23 get to unilaterally decide what the committee believes is
24 important for the deposition. So that's number one. That's
25 not a unilateral decision on your part. If you produced 13,000

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1 pages today and you're expecting them to take an important
2 deposition on Friday, it just isn't going to work that way.
3 Okay?

4 You all have to realize, I'm not driving this schedule
5 for this early hearing; you all are. If you want this hearing,
6 then you're all going to have to jump through enormous hurdles
7 to produce everything.

8 Mr. O'Neill, what are the additional e-mails that you
9 have requested?

10 MR. O'NEILL: Well, we requested documents defined to
11 include electronic communications, documents concerning, among
12 other things, the subservicing agreement, and the
13 indemnification obligations. And I can't tell you what they
14 haven't given me. I haven't looked at the 13,000 pages. My
15 understanding, based on communications between my team and Mr.
16 McKane's team, is that we're not going to be getting a
17 substantial production of e-mails. And my understanding was
18 we're not getting Ms. Yastine's e-mails. And I don't expect to
19 get Mr. Carpenter's or Mr. Brown's e-mails.

20 My point in bringing this --

21 THE COURT: This --

22 MR. O'NEILL: -- one e-mail is --

23 THE COURT: Mr. O'Neill, please stop there.

24 MR. O'NEILL: Sorry.

25 THE COURT: The difficulty with telephone hearings is

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1 sometimes when somebody's speaking, it's hard to hear when the
2 judge is interrupting. Mr. McKane, do they have Ms. Yastine's
3 e-mails? If not, when are they going to get them?

4 MR. MCKANE: Your Honor, we went through and did a
5 targeted search for e-mails relating to the negotiations and
6 the back-and-forth, as relates to the servicing agreement, the
7 core issue in the case. We did that -- they -- as it relates
8 to electronic discovery, you have to understand that we only
9 received the request eight and half days ago, and we never even
10 got to where the committee proposed search terms as it relates
11 to her e-mail.

12 THE COURT: Mr. McKane, Mr. McKane, just listen
13 carefully to me. Okay? I don't want to hear a long speech
14 about when they gave you the search terms and what you did.
15 They're saying that there -- has there been a -- I'm going to
16 ask this question, and I want a direct answer to it. Has there
17 been a search for Ms. Yastine's e-mails; yes or no?

18 MR. MCKANE: Your Honor, we did -- we have collected
19 her e-mail, and we specifically looked for e-mail regarding the
20 negotiations themselves. That was the scope of the
21 negotiations. And we produced those communications and the
22 meeting, calendar notices for the negotiations with Mr. Marano.

23 THE COURT: Have you searched for Mr. Carpenter's
24 e-mails?

25 MR. MCKANE: No, Your Honor, we have not been able to

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1 conduct that search yet, because -- and this is an issue as it
2 relates to our ability to do collection on this timetable. We
3 had already collected Ms. Yastine's e-mail in response to the
4 2004. We do not have -- we did not have Mr. Carpenter's e-mail
5 harvested as of Tuesday to be able to conduct that parallel
6 search.

7 THE COURT: When will you be able to do that?

8 MR. MCKANE: Your Honor, I don't have the input from
9 our technical team to be able to give you that answer.

10 THE COURT: Mr. O'Neill, Mr. McKane is saying that
11 there has been a search for Ms. Yastine's e-mails. What is
12 that you say they haven't searched for?

13 MR. O'NEILL: I am told by my team that we may have a
14 handful of e-mails from Ms. Yastine, and that's it. I would
15 have expected more.

16 MR. MCKANE: Your Honor --

17 MR. O'NEILL: I can't tell you what's not there.

18 THE COURT: Don't interrupt.

19 MR. MCKANE: Mr. Carpenter --

20 THE COURT: When he's finished, I'll give you a
21 chance.

22 Go ahead, Mr. O'Neill.

23 MR. O'NEILL: I have concluded, Your Honor.

24 THE COURT: Go ahead, Mr. McKane.

25 MR. MCKANE: Your Honor, as it relates to Mr.

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1 Carpenter, I don't want there to be a misconception. The
2 counterparty to the servicing agreement is Ally Bank. Ally
3 Bank were the people who were negotiating. And it was
4 specifically Ms. Yastine who was the lead negotiator.
5 Obviously they're -- the committee wants to raise issues as it
6 relates to guarantee or other obligations as it relates to AFI,
7 and we're putting forward a witness on that, Mr. Mackey.

8 THE COURT: Well --

9 MR. MCKANE: But if the core issue in the case is the
10 integrated subservicing agreement and reimbursement obligations
11 of the debtor for the use of Ally Bank's assets, the proper
12 witness and the proper party is Ms. Yastine.

13 MR. O'NEILL: For Ally Bank, that may be true, Your
14 Honor. But AFI had an indemnification obligation itself and --
15 which was recognized by both parties. And immediately pre-
16 petition, the CEOs of AFI and ResCap were discussing how and
17 whether AFI would reimburse ResCap for indemnification
18 obligations under the subservicing agreement.

19 THE COURT: That's Mr. Carpenter and Mr. Brown?

20 MR. O'NEILL: Yes.

21 THE COURT: Okay. You know, Mr. McKane, you may be
22 putting up -- you may be offering the Yastine and Mackey
23 declarations as your affirmative evidence, but that doesn't
24 say -- that doesn't mean that the committee can't take the
25 depositions or obtain the discovery of Carpenter and Brown

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1 documents.

2 They've represented that they've seen e-mails that
3 show a discussion between them or communications between them
4 that would show that the indemnity obligation could rise as
5 high as 70 to 120 million dollars. That, from what I know
6 about this dispute, is directly relevant to the dispute. So
7 the fact --

8 MR. MCKANE: Your Honor --

9 THE COURT: -- you know, on this accelerated
10 timetable, you're saying that at this stage, at least, no
11 search for Carpenter -- what about Brown? Has a search been
12 made of him?

13 MR. MCKANE: Your Honor, I believe we're in the same
14 situation with Mr. Brown as we are with Mr. Carpenter. We're
15 not trying to unilaterally limit the scope of the collection
16 efforts to narrow the committee's examination. We have
17 produced material as it relates to the indemnification
18 obligations that pre-dated the subservicing agreement. We
19 produced the requested indemnification as it related to it, and
20 the back-and-forth on it.

21 THE COURT: Are you suggesting it's not relevant to
22 this dispute if Carpenter and Brown communicate with each other
23 and indicate that the amount of the indemnity obligation may
24 increase to seventy to a hundred million dollars? Is it your
25 position that's not relevant to this dispute?

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1 MR. MCKANE: No, Your Honor. But what I'm saying is
2 that specific issue was negotiated between the debtor, Mr.
3 Marano -- Mr. Marano, specifically, and Ms. Yastine. Based on
4 our interviewing and working with the witnesses and preparing
5 them for the deposition, we understand that that issue was
6 identified by Mr. Marano to both Ally and Ally Bank, as the
7 debtors were looking for additional financing support from AFI.
8 But that specific issue was addressed at the Ally Bank level by
9 Ms. Yastine, and Mr. Mackey was aware of it in providing what
10 became the AFI DIP.

11 And materials about the AFI DIP have been provided;
12 not just the actual agreements themselves, but the back-and-
13 forth between the parties.

14 THE COURT: Mr. O'Neill, do you have a response to
15 that?

16 MR. O'NEILL: Your Honor, the date of this e-mail is
17 after the signing of the amended and restated subservicing
18 agreement. And it addresses issues -- it may well relate to
19 the modification of the -- the post-petition modification of
20 the AFI DIP. I don't know that. But that could easily be an
21 outcome. It seems to me directly relevant to that topic,
22 however. The issue is how are we going to pay for these
23 increased indemnification obligations.

24 I think the way they wound up doing it was increasing
25 the amount of the DIP. But my guess is there's an extensive

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1 discussion between the date of this e-mail and the date of that
2 modification.

3 MR. MCKANE: Your Honor, there was back-and-forth on
4 this. It was primarily not by e-mail. But one of the outcomes
5 of the need of the debtors for additional liquidity as it
6 related to their missed forecast on these reimbursement
7 obligations, was the AFI DIP. It was a requested issue in the
8 discovery, and we collected and produced material on it.

9 THE COURT: Tell me again, Mr. McKane, what Ms.
10 Yastine's schedule is.

11 MR. MCKANE: Your Honor, look, it is undeniably
12 regrettable. She is returning on the redeye to Newark at 7
13 a.m. on Friday. She is going -- she asked and we made an
14 accommodation so that the deposition would start at 10 o'clock
15 on Friday. She'll go as long as it takes on Friday to answer
16 any questions on any of these issues. She then is planning on
17 a pre-existing leave of absence for a week to deal with a
18 personal matter as relates to her mother and then spend the
19 remainder of the week with her family out-of-state. But she
20 does not return -- and I recognize that -- she does not return
21 until after the briefs are due.

22 THE COURT: Returning to California on Friday?

23 MR. MCKANE: That's correct, Your Honor. She's -- we
24 met with her this morning. And all I -- I wasn't trying to
25 streamline or focus. I just know what materials we used with

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1 her. Then she left for Ally business -- bank business to
2 California, and she returns Friday morning on the redeye.

3 THE COURT: Mr. O'Neill, what depositions are you
4 seeking to take?

5 MR. O'NEILL: At the moment, Your Honor, an AFI
6 witness, an Ally Bank witness, and each of the three
7 declarants. We told the debtors today that we were not going
8 to take Mr. Pensabene. That view might change if they're now
9 telling us that they're going to offer him as a separate
10 witness as well. But at the time, I did not understand that
11 they were going to be doing that.

12 THE COURT: Thinking of taking either Carpenter or
13 Brown depositions?

14 MR. O'NEILL: Well, I guess it would depend on what
15 the e-mails say.

16 MR. MCKANE: Your Honor, this is Mr. McKane. Just so
17 you understand the state of play, we have not received a
18 deposition request or 30(b)(6) request for Ally Bank or AFI at
19 this point.

20 THE COURT: Mr. McKane.

21 MR. MCKANE: All we --

22 THE COURT: Mr. McKane, in this expedited discovery
23 schedule, I don't necessarily expect that there are going to
24 be -- that they know exactly what they're going to do. If we
25 want to put this -- look, if you all want to put this hearing

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1 off, that's fine with me. I'm not the one pushing this
2 hearing.

3 AFI is the one who insists that this hearing go
4 forward and that a decision be reached promptly, okay? If you
5 want to insist on that, then you're going to have to do
6 everything conceivable to provide the committee with all the
7 discovery it requests. Otherwise, I'm just simply going to
8 adjourn the hearing. It's as simple as that. Okay. I don't
9 want to hear about these problems. Just throw another ten or
10 twenty people on and get the Carpenter and Brown documents and
11 any other e-mails that they want.

12 If the evidence comes out that there are additional
13 e-mails that weren't searched for and found, okay, there are
14 going to be consequences. Okay? I didn't set this schedule.
15 You're the one -- it's AFI that's the one that's driving this
16 train. Okay? If you want to insist on that, then you have to
17 do everything conceivably possible to get the committee
18 everything it needs so that it can be prepared to go forward
19 with a hearing on August 16 and 17. It's as simple as that.

20 MR. MCKANE: Your Honor --

21 THE COURT: I don't want to hear what your problems
22 are.

23 MR. MCKANE: We're not identifying problems. We're
24 not, Your Honor. We just -- we're trying to identify the
25 situation.

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1 THE COURT: Well, that's all I hear from you is about
2 how you've done this and how you've done that, and they have to
3 go forward on Friday when you produced 13,000 documents today.
4 Okay? You know, I feel for Ms. Yastine about her vacation; and
5 if she has family issues, that'll take a priority. But if
6 she's got a vacation, she may have to put the vacation off.
7 The deposition can start on Friday. If it's not concluded
8 because the committee has not had an opportunity to review all
9 the documents or they have more questions, she can go make the
10 trip for family business, but she's going to have to interrupt
11 her vacation. It's as simple as that. Okay?

12 Regrettable, I understand. But look, unless you want
13 to agree to adjourn the hearing now. You're representing AFI.
14 Do you want to agree to adjourn the hearing?

15 MR. MCKANE: Your Honor, I'm not in a position to make
16 that offer.

17 THE COURT: Okay.

18 MR. MCKANE: I'm not.

19 THE COURT: And if you're not in the position to make
20 that offer, then I am ordering that Ms. Yastine be made
21 available for deposition starting Friday morning. If the
22 deposition's not concluded, it will -- when does her vacation
23 start?

24 MR. MCKANE: Your Honor, she was planning to address
25 the personal issue with her mother when the deposition ceased.

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1 That's why she asked for it to be in New Jersey.

2 THE COURT: No, I didn't ask about -- yeah, but then
3 you said she was going on vacation for a week.

4 MR. MCKANE: That's correct. I don't know -- I'm --

5 THE COURT: We'll not interfere with her dealing
6 with --

7 MR. MCKANE: I don't know exactly how many days it's
8 going to take. I don't want to get into what the issue is with
9 her mother.

10 THE COURT: You report back to Mr. O'Neill by tomorrow
11 morning at 10, on exactly what Ms. Yastine's situation is. If
12 she needs to deal with health issues about her mother, she
13 definitely has to do that. But vacation is going to have to be
14 interrupted. If they're able to complete the deposition on
15 Friday, that's fine.

16 Mr. O'Neill, under the circumstances, take the
17 deposition at Newark Airport. I fully understand. If she's
18 coming in on the redeye for the deposition, and then she's
19 going immediately back on business and personal matters, do the
20 deposition at Newark Airport. But if you need more time with
21 the deponent, I'm ordering that that take place next week. If
22 there are more problems, contact the Court, and I'll deal with
23 it.

24 But I'll just tell you, Mr. McKane, if you want to get
25 your client to agree to adjourn the hearing to allow the

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1 committee to take the discovery that it needs and get ready for
2 the hearing, then we'll talk about a new hearing schedule.
3 Short of that, you're going to have to do -- I regret that
4 people will have to have their vacation interrupted, but that's
5 just the way it's going to have to be.

6 Personal business, health issues about her mother?
7 Fine. Let her take care of that first. You indicated she was
8 then planning to take a week's vacation. That's going to have
9 to be interrupted.

10 MR. MCKANE: I understand -- I understand the message.

11 THE COURT: Mr. O'Neill, work that out with Mr. McKane
12 by tomorrow morning.

13 MR. O'NEILL: I will, Your Honor. I think the same
14 situation, to some degree, applies to Mr. Whitlinger, who I
15 understand is taking a vacation next week. I don't think he
16 has the same health or family-related issues that Ms. Yastine
17 has. I think we could agree to start that deposition on Friday
18 as well, and if we don't finish it, we would ask -- we'll, I
19 guess, deal with the debtors about how to get him back to
20 conclude it next week.

21 THE COURT: Okay, the same applies -- I'm sorry that
22 this is in -- this is coming at a time where lots of people
23 have vacations planned. Mr. Whitlinger was the first-day
24 declarant. He's been present in court at other hearings. I
25 regret if his vacation is interrupted by this. But it's not

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1 the committee that's driving the dates of this hearing. So,
2 you know, start the deposition. Hopefully you'll be able to
3 complete it and you won't have to take up the deposition.
4 Otherwise, do the best you can to accommodate these witnesses
5 so that they can take some of the time off that they were
6 intending to take. But you're entitled to conclude your
7 deposition. You're also entitled to be able to get documents
8 and prepare.

9 MR. O'NEILL: And on that note, Your Honor, we would
10 like the Brown and Carpenter e-mails. And depending on what
11 they say, we may need to take their depositions as well.

12 THE COURT: After this call, discuss with Mr. McKane
13 and with Mr. Lee obtaining -- or Mr. Rains, obtaining the Brown
14 and Carpenter e-mails. And Mr. McKane, you're just going to
15 have to commit whatever resources are needed to get those
16 documents produced as quickly as possible. Okay?

17 MR. MCKANE: We understand the message, Your Honor.
18 We'll get it done.

19 MR. LEE: Your Honor, it's Gary Lee. Perhaps this
20 would be the appropriate time to address the issue that we've
21 been discussing with the examiner and see whether there's --
22 how we address, now, this rather expanded motion practice and
23 trial and the way in which it's going to fit in with the
24 examination. I don't know if Mr. Seife is still on or if we've
25 scared him away based on this call.

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1 THE COURT: Mr. Seife?

2 MR. SEIFE: Good afternoon, Your Honor. Howard Seife,
3 Chadbourne & Parke. Yes, we've had discussions both with
4 committee counsel and with debtors' counsel about concerns we
5 have based on, as Gary suggested, this upcoming trial. And
6 certainly listening in on today's call, our issues are only
7 heightened by what we're hearing.

8 And I guess they're really twofold, Your Honor. One
9 is, which I think you noted at one of the prior conferences,
10 many of the issues being dealt with here, both factual and
11 legal, are what the examiner has been asked to look at. And
12 clearly the parties have to be aware that to the extent these
13 issues are aired now and Your Honor is being asked to rule on
14 any of these legal issues or make factual findings, they may
15 well have implications for the investigation, may limit the
16 investigation, or put it in a different direction. And I'm
17 just wondering if this is really the best procedure to get to
18 the underlying facts and deal with the much bigger and broader
19 issues which the examiner has been asked to look at.

20 And the second impact we're seeing on the
21 investigation is that understandably, many of the key parties
22 here are very much preoccupied. And they are busy producing
23 documents and preparing witnesses and reviewing e-mails
24 relating to this particular narrow issue. And frankly, it is
25 difficult, I think, for the parties and the law firms involved

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1 to focus on the needs of the examiner.

2 Now, understandably, this should be a fairly limited
3 period of time, if in fact, the hearing goes forward on the
4 16th. But our concerns are, as often is the case, that -- and
5 Your Honor has even alluded to that -- there is always the
6 possibility for adjournments or new schedules, which would
7 heighten our concerns about getting our investigation off to a
8 robust start.

9 Those are the problems. The solution, I would not
10 think is particularly the examiner's role. But in discussing
11 these issues with the examiner, it seems, at least to an
12 outsider, that this should lend itself to some kind of
13 commercial resolution. The dollars don't seem to be, in the
14 magnitude of this case, to be particularly overwhelming. And
15 it seems to me that given the talent on this call and
16 representing the various parties, there should be some way for
17 parties to preserve their rights and find some kind of interim
18 solution, whether it's escrowing the monies to be paid, whether
19 it's finding some slicing of the baby or deferral of this issue
20 to a later date after the examiner has issued his report, just
21 would make so much commercial sense, rather than distracting
22 the parties, taking up this Court's time, and putting up
23 potential delays in the examiner's investigation.

24 So that said, Your Honor, I don't know to what extent
25 the parties have been talking. But it seems to me, as an

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outsider looking in, that some kind of commercial resolution would certainly address our concerns as an examiner to be able to look at these issues unimpeded by this potential sideshow and without the inherent delays that we're hearing about.

THE COURT: Mr. Eckstein, can you respond to that?

MR. ECKSTEIN: Your Honor, I'm happy to. I guess first, I'm not sure I would necessarily share the view that 100-plus million dollars of post-petition payments are not significant even in the context of this case. These are very significant payments.

That said, I think as I had indicated, Your Honor, at the status conference the other day, we have been endeavoring over the last several weeks to avoid the litigation and find a resolution. And I share Mr. Seife's view that finding a way to really allow AFI and ResCap to sort of preserve their respective rights is a sensible thing to do. Unfortunately, Ms. Yastine of Ally Bank expects to get paid. And I think what it ultimately comes down to is finding a way for ResCap and AFI to come up with a, sort of, an interim solution that, to the extent possible, maintains the status quo because I don't believe that Ally Bank wants to participate in this process. And we, therefore, haven't suggested to Ally Bank to defer.

We are amenable -- we've been amenable and remain amenable to try to essentially find what Mr. Seife is referring to as an interim status quo solution that allows this to be

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1 folded into the examination. And toward that end, I'm
2 anticipating and, frankly, hope that there's going to be more
3 discussions. But candidly, Your Honor, short of literally
4 negotiating this on this call, which I don't know that Your
5 Honor necessarily is inviting, there needs to be a mutual
6 desire to try to reach that conclusion and that's what we,
7 frankly, need to have happen.

8 MR. LEE: Your Honor, it's --

9 MR. SCHROCK: May I be heard, Gary?

10 MR. LEE: Sure. I mean, Judge, it's up to you. I
11 wanted to just remark on a couple things --

12 THE COURT: Go ahead, Mr. Lee, and then I'll give
13 somebody else a chance.

14 Go ahead, Mr. Lee.

15 MR. LEE: So, Your Honor, I am obviously concerned
16 about the impact this hearing is going to have not just on the
17 examination but on obviously the need to deliver on a
18 subservicing agreement. And Your Honor heard from the DOJ at
19 the last hearing. So we are facing this from lots of different
20 sides and none of them look good. So I have had discussions
21 with Mr. Seife and I believe this really cries out for a more
22 elegant and Solomonic resolution that leaves all of the parties
23 with their rights reserved.

24 I think fundamentally, the bank needs to be paid. It
25 seems to me, Your Honor, that there is a solution in which the

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1 debtor continues to make the payments to the bank; the
2 committee reserves the right that I think it believes is
3 fundamental which is that if the agreement is approved, it will
4 impair its rights to argue later after the examination that the
5 indemnification obligation belonged to Ally and it impairs its
6 various rights. It seems to me, Your Honor, that it's
7 perfectly possible to fashion an order in which the debtor
8 continues to make the payments but without prejudice to the
9 investigation, the examiner's ability to look at the fair
10 allocation of indemnification obligations pre- and post-
11 petition, and that preserves the parties' position and allows
12 the committee and everybody else, after they see the examiner's
13 report, to make an informed decision as to whether or not that
14 is or isn't a claim.

15 That will allow the debtor to go about what we think
16 is fundamentally important which is servicing pursuant to the
17 servicing agreement and delivering a robust bidding process and
18 sale. It will leave everybody where they are today, and it
19 will leave the examiner to do what Your Honor's appointed the
20 examiner to do. So I believe there is a solution. I don't
21 believe it is as complicated as -- no more complicated than I
22 expressed it.

23 And just to sort of clarify one thing that Mr.
24 Eckstein has said, the sum total of post-petition payments to
25 date is nineteen million dollars. This is definitely, Your

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1 Honor, a hundred million dollar issue, but from a post-petition
2 perspective, it's a nineteen million dollar issue. There are
3 future payments to be made. We, and I think everybody,
4 believes that the bank needs to get paid then by somebody. My
5 suggestion is that that is an appropriate outcome reserving all
6 of these issues for another day.

7 So I will stop there, Your Honor.

8 THE COURT: Okay.

9 MR. SCHROCK: Your Honor, it's Ray Schrock for Ally
10 Bank.

11 From the bank's perspective, and this is critically
12 important, I think, for the Court to understand and for all the
13 parties to understand, there is an agreement in front of the
14 Court for the subservicing which everybody acknowledges is
15 extremely important to the estate. There is a provision in
16 that agreement that says if you use the bank's loans for DOJ
17 modifications, you have to reimburse the bank for using its
18 loans to fulfill those obligations.

19 I completely appreciate everybody -- I think the right
20 solution is to allow the debtor to make those payments. If the
21 parties want to reserve rights on that, I think that's fine.
22 But it is critically important -- listen, this is a bank issue
23 to the bank. The bank counterparty says ResCap, by law under
24 Reg. W, you must fulfill, ResCap, your obligations which you
25 agreed to with us. And we get in at the sideshow of these

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1 indemnities and the DOJ order, and there are lots of issues
2 associated with going into that, and it really is unnecessary.

3 But I sit here and I listen to this, Your Honor, about
4 that Ally -- there's an implication that Ally or Ally Bank is
5 being difficult. Your Honor, this company's bent over
6 backwards to do the right thing here. We're willing to do the
7 right thing and to continue to support the debtor, but it's not
8 just a foot in the sand or a foot on the line to say that
9 ResCap has to honor its obligations under the contract. It is
10 critically important.

11 THE COURT: You know, Mr. Schrock, the one thing that
12 I haven't heard people do is say that it's Ally Bank. It
13 sounds like much more of an argument between AFI and the
14 debtors.

15 MR. SCHROCK: But, Your Honor, this is a contract --

16 THE COURT: Well, but I've also heard that the
17 indemnity was entered into in January or thereabouts.

18 MR. SCHROCK: Now, Your Honor, there is one agreement
19 up for approval. There is a subservicing agreement before the
20 Court. It says -- and ResCap signed it; it was highly
21 negotiated -- it says ResCap, if you use our loans to modify,
22 you, ResCap, will pay back. Now, if the examiner, if other
23 parties want to go back and look and say listen, under this
24 side agreement this or that, somebody owes somebody else,
25 people should reserve rights on that. But this agreement, to

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1 ask the bank to say listen, this agreement, we're not going
2 to -- ResCap's not going to honor its obligations to pay back
3 the bank for using its property to perform under a settlement
4 to which it's not even a party and it's -- it is not something
5 that we can settle.

6 MR. ECKSTEIN: Your Honor, if I may just briefly
7 reply.

8 Mr. Schrock wears two hats here. And Your Honor
9 correctly points out this is not a debate between ResCap and
10 Ally Bank. Your Honor correctly points out the debate is about
11 whether or not the responsibility is going to be allocated to
12 ResCap, which has many obligations that it has not paid, or to
13 AFI, which is jointly and severally obligated to indemnify Ally
14 Bank. And that's what this is about. And I understand Mr.
15 Schrock would like to mask this as a debate with Ally Bank, but
16 it's not.

17 And this is about whether it's appropriate for one-
18 hundred percent of the indemnification to be imposed on ResCap
19 and zero on AFI. And for Mr. Lee to suggest that the right
20 status quo is to have ResCap pay a hundred percent and we can
21 chase AFI, that's a solution. Frankly, we had proposed a
22 fifty-fifty split, and let both sides pay fifty percent in
23 respect of the indemnification and let both sides reserve their
24 rights after the examiner. The committee thought that was a
25 reasonable compromise and we took --

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1 THE COURT: Mr. Eckstein, have you explored -- and I
2 don't want to get into negotiating, that's not my role. But
3 let me just ask, you raised that you had a proposal about a
4 fifty-fifty split. Have you discussed the possibility of a
5 dollar cap on the ongoing -- on the periodic monthly
6 obligations of the debtors?

7 If this issue -- on the one hand, Mr. O'Neill talks
8 about having seen e-mails that say it could rise to sixty to a
9 hundred million dollars, and Mr. Lee says post-petition it's
10 been nineteen million dollars, on an interim basis can you try
11 and agree with AFI -- because I -- it certainly was -- no one
12 seems to be disputing that Ally Bank is entitled to payments;
13 this dispute is between AFI and ResCap as to who ought to be
14 paying and how much and when. If you can't get an agreement
15 with respect to the percentage, have you explored whether you
16 can reach an agreement as to a dollar cap per period?

17 MR. SCHROCK: Your Honor, I just have to -- it's Ray
18 Schrock again. Just to make one thing --

19 THE COURT: The question was to Mr. Eckstein. I'll
20 give you a chance, Mr. Schrock.

21 MR. SCHROCK: Okay.

22 MR. ECKSTEIN: Your Honor, we have proposed the fifty-
23 fifty allocation of the indemnification obligations and we'd be
24 happy to explore other variations. But there hasn't been
25 anything beyond that.

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1 THE COURT: And I'll give you a chance, Mr. Schrock,
2 in just a minute, but from the Court's perspective, one of the
3 things that I find least satisfying about the current situation
4 is, here, an examiner's been appointed, this agreement, the
5 indemnity obligation is very much an important issue for the
6 examiner, and you're all charging ahead with an August trial
7 that doesn't allow the examiner to do his job. Okay. And
8 that's very disconcerting to me. This case is certainly -- you
9 know, I haven't been at it as long as you all have been
10 practicing bankruptcy law, but from -- and in talking to some
11 of my colleagues, it's -- the things that are pushing this case
12 are not the normal ones that we see in the court, okay? It
13 doesn't make me particularly happy.

14 If I have to go ahead -- look, if you're going to go
15 ahead and try it, fine. Go ahead and try and I'll decide what
16 I have to. But I think this, in part, goes to AFI. If I go
17 ahead and try the case and I decide issues and then the
18 examiner completes his investigation and the facts turn out
19 different than you present them, you're going to have a high
20 cost to pay with me, I'll just tell you that right now.

21 I won't want to hear later on that, well, we didn't
22 have time to find those documents, those documents that we
23 discovered six months from now, they were -- everything was
24 produced under pressure, we produced -- you're going to pay the
25 price. I'll just tell you that right now. That's why I say

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1 you insist on this schedule, you will insist -- I insist that
2 there be absolute full document production, discovery so that
3 this case goes to trial on August 16 and 17 with the committee
4 having a full, fair opportunity to prepare. If there turn out
5 to be surprises later, there will be a price to pay. I just
6 want to make that clear, okay? If everything is done the way
7 it has to be and you can't resolve this issue, I'll go ahead
8 and decide what has to be decided. But I just want to make
9 clear to you all there will be consequences. Okay? I don't
10 like -- I've made this comment in open court and I've made it
11 in our chambers conference before. I don't like anybody trying
12 to drive the result here in a way that I don't think is
13 appropriate. Okay? I understand all of you feel time pressure
14 and we'll see how that all plays out.

15 Mr. Schrock, you wanted to be heard.

16 MR. SCHROCK: I did. Thank you, Your Honor. I've
17 heard and understood on your message.

18 One point I think that I just have to emphasize again
19 for the Court and the parties: there is a fully integrated
20 agreement before the Court and we -- as I said to Your Honor in
21 open court last week on this matter -- we don't think getting
22 into the DOJ, the indemnification issues, all of these things,
23 is necessary or appropriate on this particular issue because we
24 believe there is a fully integrated agreement and it's
25 important to the bank that the counterparty to that agreement

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1 honors its obligations under the agreement. And so that is the
2 fundamental issue that we're struggling with, Your Honor, and I
3 fully appreciate what you're saying.

4 We are not driving an unreasonable schedule. We have
5 a package of support, we are cooperating fully. This is the
6 subservicing agreement with the bank that I think everybody
7 wants to get approved. And I don't want the Court to have any
8 misimpression that we're anything other than good faith actors
9 and very reasonable about all of these things, Your Honor. I'm
10 just trying to make the point for you, Judge, that it's really
11 an integrated agreement. We really see it as a bank issue.

12 We're happy to talk to anybody. I'm talking to Mr.
13 Eckstein tonight at 6:30. I reached out to him, I said Ken,
14 why don't we go have coffee, get together and talk. We are
15 not -- we are in court a lot, Your Honor. We're not the kind
16 of shop that runs an unreasonable case. We're trying our best
17 to do the right thing, here.

18 We fundamentally do see it as the bank issue and I
19 take Your Honor's comments to heart. But I don't want you to
20 think and I don't want to understate -- and I know Your Honor
21 doesn't like to hear the regulatory overlay; I appreciate that.
22 We are a bank holding company, we're a bank and I know we have
23 to answer sometimes to parties. But we are doing everything
24 possible -- and I just wanted to share that for Your Honor --
25 to cooperate with the examiner, and we're meeting with him

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1 tomorrow, and I don't want an unnecessary fight. I think it's
2 the last thing AFI or Ally Bank wants. We're trying to do the
3 right thing and support this company to a sale and we hope a
4 pre-arranged plan. And that's what we signed up for.

5 MR. ECKSTEIN: Your Honor, at the risk of belaboring
6 this call, two points. First of all, I will admit that Mr.
7 Schrock and I are going to probably have drinks and not coffee.
8 But --

9 MR. SCHROCK: That's true, Your Honor.

10 MR. ECKSTEIN: -- more substantively, the problem, I
11 think as Mr. Schrock understands, is that this is an integrated
12 agreement that was crafted by AFI together with ResCap prior to
13 the filing and presented to us sort of as a package. And
14 unfortunately, it's going to require the Court's determination
15 of whether or not this package was reasonable. And we don't
16 believe it was reasonable in shifting a hundred percent of
17 these responsibilities to ResCap. And that's simply -- and
18 there's a substantive disagreement on that.

19 But with all that said, and we understand that they
20 would like the Court to approve the agreement that they
21 crafted, and we're either going to be able to reach a
22 resolution or we'll have to present it to the Court and the
23 Court will have to make -- determine whether or not this
24 package is reasonable. And we understand as much as everybody
25 else in this case the number of issues that are involved, and

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1 so I would say at this point in time, Mr. Schrock and I are
2 going to sit down. And I think we've all said that we'd like
3 to try to see if we can reach a resolution and we will continue
4 to try and I think we'd be happy to come back and report to the
5 Court again next week, if that would be useful. But I think
6 that both sides have to understand that they need to come to
7 the table, and if there's really a desire to not litigate this
8 issue now and to come up with a real status quo solution, then
9 I would suggest that AFI has to understand that as much as
10 ResCap.

11 This is not Ally Bank; AFI and ResCap are going to
12 have to understand how to preserve the status quo if that's
13 what the parties want to do.

14 MR. LEE: Your Honor, sorry; it's Gary Lee. I just
15 want to be absolutely clear what ResCap's position is. I think
16 that we are the ones that are alerting to the Court and the
17 examiner to the fact that we are concerned that, as Mr.
18 Eckstein lays out, this trial will get into far more than the
19 four corners of the indemnity and that goes to the heart of the
20 examiner's investigation. And that causes us some pause,
21 number one.

22 And number two, what I think we were attempting to
23 suggest was between the position that AFI has and the committee
24 has -- because ResCap has one position and one position only:
25 we need the subservicing agreement approved so we can,

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1 consistent with our fiduciary obligations, get the highest
2 purchase price and return to the creditors.

3 As to where the indemnity ultimately lies as opposed
4 to who needs to pay the bank back, the examiner will make that
5 determination if he is allowed to proceed with his examination.
6 He will make that determination and he will make those facts
7 known to the creditors when he issues his report. And what I'm
8 simply suggesting and trying very hard to convince everybody of
9 is that there has to be a solution in which the bank gets
10 paid -- and I appreciate Mr. Eckstein doesn't like the notion
11 that it's ResCap who pays it -- that everybody reserves their
12 rights. And if necessary, AFI -- and I'm happy to volunteer --
13 escrows the money somewhere else. And the right solution, Your
14 Honor, is one that nobody likes. And in this situation that
15 might be the right solution.

16 But the servicing agreement needs to be approved. And
17 that is what will provide the best value to creditors and that
18 is, quite frankly, what we're concerned with, not what will
19 become not just a sideshow, but a very large side show.

20 THE COURT: All right. Let me deal with the issues
21 that I have to deal -- you know, I think you all ought to sit
22 down and have a good drink with -- Mr. Eckstein, have an extra
23 one for me. Hopefully --

24 MR. ECKSTEIN: Well, how about vino, Your Honor?

25 THE COURT: Okay. But in the meantime, Mr. O'Neill?

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1 MR. O'NEILL: Yes, sir?

2 THE COURT: What documents do you require -- have you
3 requested that have not been produced, by category? Whether
4 it's the Carpenter and Brown e-mails -- lay out for me what is
5 it that you believe have not been searched for or produced so
6 far.

7 MR. O'NEILL: We believe that the Carpenter and Brown
8 e-mail accounts have not been searched at all with respect to
9 our document request to Ally Bank and --

10 THE COURT: Have you given search terms?

11 MR. O'NEILL: We have not; we have not been requested
12 to give search terms. But we also think it's also two accounts
13 and so, therefore, it's not that onerous. But we're happy to
14 give search terms if that will facilitate matters.

15 THE COURT: What time period?

16 MR. O'NEILL: My understanding is they only have them
17 going back for a period of ninety days. Well, I guess to
18 January. We've agreed to go back to January 1 of this year
19 with the debtor and I don't think we would require more of Ally
20 Bank or AFI.

21 THE COURT: Okay. What else? The Carpenter and Brown
22 e-mails, what else?

23 MR. O'NEILL: Yastine and Mackey, if those are their
24 two 30(b)(6) witnesses. Same general conditions and we're
25 happy to get them search terms.

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1 THE COURT: E-mails, January 1, 2012.

2 MR. O'NEILL: Yes.

3 THE COURT: I can acknowledge that the Carpenter and
4 Brown e-mails weren't searched. I'm not sure what the answer
5 is as to Mackey and Yastine.

6 MR. O'NEILL: Yastine is vague --

7 MR. MCKANE: Your Honor --

8 MR. O'NEILL: Excuse me; go ahead, Mr. McKane.

9 THE COURT: McKane, go ahead.

10 MR. MCKANE: Thank you, Your Honor. We had done
11 targeted searches of Yastine. We understand what you're
12 saying. Right. We will --

13 THE COURT: Wait, you're going to understand what I
14 say because I'm going to give you a deadline. But, go ahead.

15 MR. MCKANE: We will conduct the e-mail searches and
16 produce any documents identified in the time period with the
17 search terms provided.

18 THE COURT: Well, let me --

19 MR. MCKANE: And we will double back and do Yastine
20 and Mackey as well as Brown and Carpenter. And because we --
21 we had done targeted searches before but we want to do this in
22 a comprehensive process that satisfies the committee.

23 THE COURT: And are you telling everyone that those
24 searches will be complete and the documents produced?

25 MR. MCKANE: Your Honor, until I -- I don't have a

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1 sense of the volume until the search is run. That's just a
2 technical matter and so I think I will be able to do that, but
3 I will communicate it as soon as I get the information. And I
4 understand what the Court said earlier about Ms. Yastine in
5 terms of coming back.

6 THE COURT: Well, I'm going to put a finer point on
7 it. E-mails of Yastine, Mackey, Carpenter and Brown shall be
8 produced, all responsive documents shall be produced no later
9 than 12 noon Wednesday, August 8th. With respect to Yastine
10 and Mackey, it should be sooner than that because you've
11 indicated you've already done a targeted search of them. So by
12 giving you this outside deadline, don't wait until then. But
13 I'm telling you that is the deadline. I don't care what
14 resources you need to commit to getting these documents.
15 That's already longer than, frankly, makes me comfortable given
16 when the hearing is.

17 That is, I'm so ordering the transcript that all
18 responsive documents in the Carpenter and Brown e-mails shall
19 be produced on or before 12 noon August 8th and as to Yastine
20 and Mackey -- they ought to be produced on a rolling basis, if
21 you can. And Yastine and Mackey, please advise Mr. O'Neill
22 what additional steps need to be taken searching those two.
23 You've indicated as to Carpenter and Brown, that hasn't been
24 done yet.

25 Mr. O'Neill, anything else that you need?

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1 MR. O'NEILL: Your Honor, just one follow-up point.

2 And that is to the extent that we need to -- we're obviously
3 going to need to take depositions after we get the e-mails and
4 so we'll need the flexibility to take them between the 9th and
5 the 16th. And I know Your Honor's pre-trial procedures require
6 the submission of all deposition designations by the 9th. So I
7 guess we just need an exception from that in order to pursue
8 these additional depositions.

9 THE COURT: You'll advise what additional depositions
10 you're planning to take.

11 MR. O'NEILL: Okay.

12 THE COURT: Obviously, I will -- if you can't take the
13 deposition until you have these e-mails -- look, there's
14 nothing to stop you from -- you already have some documents
15 relating to Carpenter and Brown. If you're going to go ahead
16 and -- while it would be nice to be able to get these done in
17 one sitting, you don't have to wait until everything is done.

18 MR. O'NEILL: Very well, Your Honor.

19 THE COURT: Any other issues about discovery, Mr.
20 O'Neill?

21 MR. O'NEILL: No, I think that's it, Your Honor.

22 THE COURT: All right. I want to schedule another
23 telephone conference. You'll have to bear with me because I'm
24 taking this call from home so I'm not in the court; this is
25 being recorded by an ECRO from -- takes me a minute to get my

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1 full calendar.

2 (Pause)

3 THE COURT: The next thing I'd like to do, we have a
4 hearing scheduled for Wednesday the 8th, 2 o'clock. We're
5 going to continue this, a status conference with respect to
6 this matter Wednesday the 8th at 2 o'clock. Well, first, I
7 assume, we'll take up the KEIP-KERP?

8 MR. LEE: Yes, Your Honor.

9 THE COURT: At the conclusion of that, I know there a
10 couple of other things that are on, as well, but we'll take
11 this up. I want a full status report of where things stand at
12 that time.

13 Nothing anybody wants to raise today?

14 Mr. Eckstein?

15 MR. ECKSTEIN: Yes, sir?

16 THE COURT: Find a solution.

17 MR. ECKSTEIN: As Your Honor knows, I am singularly
18 focused on finding a solution.

19 THE COURT: I don't mean to pick on you for that,
20 but --

21 MR. ECKSTEIN: I understand, Your Honor. That's fine.
22 I will try to do what we can and will surely try to report back
23 by the 8th.

24 THE COURT: Okay.

25 MR. ECKSTEIN: Okay. Thank you, Your Honor.

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THE COURT: We're adjourned.

(Whereupon these proceedings were concluded at 5:03 PM)

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I N D E X

RULINGS

	Page	Line
E-mails of Yastine, Mackey, Carpenter and	43	7
Brown shall be produced; all responsive		
documents shall be produced no later than 12		
noon Wednesday, August 8th		

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: August 2, 2012